(3) (2) (1) (1)

Office-Supreme Court, U.S.
FILED
JAN 28 1985
ALEXANDER L. STEVAS,
CLERK

Nos. 84-659, 84-683, 84-5524 and 84-5816

In the Supreme Court of the United States

OCTOBER TERM, 1984

ANTHONY DiPASQUALE AND JAMES DiPASQUALE, PETITIONERS

v.

UNITED STATES OF AMERICA

PETER J. SERUBO AND JOHN SERUBO, PETITIONERS

v.

UNITED STATES OF AMERICA

AUGUST REDDING, PETITIONER

v.

UNITED STATES OF AMERICA

VICTOR SZWANKI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether forcible collection of a claimed debt constitutes the use of extortionate means to collect an extension of credit in violation of 18 U.S.C. 894(a).

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OPINION BELOW

The opinion of the court of appeals (84-659 Pet. App. 1a-34a) is reported at 740 F.2d 1282. The opinion of the district court (84-5524 Pet. App. 30a-53a) is reported at 561 F. Supp. 1338.

JURISDICTION

The judgment of the court of appeals was entered on July 31, 1984. A petition for rehearing was denied on August 28, 1984 (84-569 Pet. App. 35a-36a). The petitions for a writ of certiorari were filed on September 29, 1984 (No. 84-5524), October 24, 1984 (No. 84-569), October 26, 1984 (No. 84-683), and October 29, 1984 (No. 84-5816). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Pennsylvania, petitioners were convicted on one count of conspiracy to collect extensions of credit by extortionate means, in violation of 18 U.S.C. 894(a). Five of the six petitioners also were convicted on various counts of the underlying substantive offense, in violation of 18 U.S.C. 894(a).[1] Petitioner Anthony DiPasquale was

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[1] The indictment in this case contained four counts and charged nine defendants. One of the defendants pleaded guilty prior to trial and testified for the government. Seven of the remaining eight defendants were convicted on some or all of the counts in the indictment. These seven defendants were all convicted on the conspiracy count (Count IV). On the substantive counts, the convictions were as follows: petitioners Anthony DiPasquale and Victor Szwanki were convicted of beating and threatening Michael Cosmo on December 13, 1979, to collect a claimed debt of $5,000 (Count I); and of beating

sentenced to a total of 80 years' imprisonment; petitioner Victor Szwanki was sentenced to 35 years' imprisonment; petitioner James DiPasquale was sentenced to 12 years' imprisonment; petitioner Peter Serubo was sentenced to 20 years' imprisonment; and petitioners John Serubo and August Redding were sentenced to 15 years' imprisonment.[2] The court of appeals affirmed (84-659 Pet. App. 1a-34a).

1. The facts of the case are set forth in detail in the opinion of the district court (84-5524 Pet. App. 33a-38a) and are summarized in the opinion of the court of appeals (84-659 Pet. App. 3a-6a). The evidence at trial showed that petitioners and co-defendant Nicholas Fidelibus extorted payment for nonexistent debts from five separate victims through a simple but brutal scheme: they would threaten, beat, or torture the victim until he admitted owing the debt, and they would then permit him to obtain the money from friends and relatives to repay the "debt."[3]

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and threatening James Kolzer on March 25 and 26, 1981, to collect a claimed debt of $16,000 (Count II). Petitioners Anthony DiPasquale, John Serubo and Peter Serubo, as well as co-defendant Nicholas Fidelibus, were convicted of beating and threatening Swain Crawford on May 9, 1981, to collect a claimed debt of $1,800 (Count III). 84-5524 Pet. App. 33a.

[2] The district court informed Peter and John Serubo that their sentences would be reduced by 10 years if they repaid $7,000 taken from two of the victims.

[3] The victims were Michael Cosmo, James Kolzer, Swain Crawford, Francis Rosetti and Mark Courtney. Michael Cosmo was attacked in September and December 1979 and January 1980; the December attack was the subject of Count I of the indictment. James Kolzer was attacked on the evening of March 25, 1981; that attack formed the basis for Count II. Swain Crawford was attacked on May 9, 1981; that attack

a. The first victim, Michael Cosmo, sold methamphetamine for petitioners Anthony and James DiPasquale during 1978 and 1979. Twice during the fall of 1979, Anthony DiPasquale extorted from Cosmo a total of $7,500 that DiPasquale claimed Cosmo owed him, giving Cosmo an opportunity to raise the money from family or others. On the first occasion, Cosmo was severely beaten after he was asked by petitioner Redding if he had the money he owed Anthony DiPasquale. In mid-December 1979, Cosmo went to Anthony DiPasquale's house, at DiPasquale's request, to carpet the basement. When Cosmo later attempted to leave to take his car to his wife, petitioner Redding stopped him at the door and knocked him to the ground. As Cosmo lay on the floor, Redding kicked and punched him and petitiner Anthony DiPasquale repeatedly struck Cosmo on the side of the head with a fireplace poker until Cosmo was rendered unconscious. After Cosmo awoke, Anthony shouted that if Cosmo did not have "the money" he would die. Cosmo agreed to borrow money to pay DiPasquale. Cosmo was permitted to go upstairs, where he again was beaten, this time by petitioner Szwanki, and was released eight blocks from his house with a towel over his head. As a result, Cosmo was hospitalized for several days. After his release, he borrowed money from a family friend

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underlay Count III. Francis Rosetti was threatened in May 1981, and Mark Courtney, a former employee of the Serubos, was attacked on June 3, 1981. The acts that formed the basis of the substantive counts were included among the overt acts listed in the indictment. Although the threats to Rosetti and the attack on Courtney were not listed as overt acts in the indictment, testimony about those incidents was admitted as evidence of the conspiracy. 84-5524 Pet. App. 37a-38a.

and paid Anthony DiPasquale. 84-569 Pet. App. 3a; 84-5524 Pet. App. 33a-34a.[4]

b. Like Cosmo, James Kolzer sold drugs for Anthony DiPasquale. In December 1980, Kolzer lent Anthony $10,000 for the purchase of chemicals to manufacture methamphetamine. After they split the proceeds of the resulting sales, Anthony insisted that Kolzer still owed him $8,000. Kolzer denied the debt and insisted that Anthony DiPasquale in fact owed him money. In early February 1981, petitioner Redding telephoned Kolzer, told him he was calling at Anthony's request, and said that DiPasquale needed the $8,000 Kolzer owed him to get out of jail. Kolzer again denied any debt and refused to pay. 84-659 Pet. App. 4a; 84-5524 Pet. App. 35a.

In March 1981, after Kolzer and Anthony discussed a renewal of their drug dealing, Anthony telephoned Kolzer and asked him to meet him. At the agreed time, Kolzer met with Anthony, who was accompanied by Szwanki. They drove to an auto body shop, where Anthony and Szwanki drew guns on Kolzer. Szwanki then forced Kolzer to kneel, covered his head with a bag, and bound his hands and feet. Kolzer was then struck repeatedly with a pipe. Anthony said that Kolzer owed him $8,000 but that it would cost Kolzer more to remain alive. Later, Anthony and Szwanki hanged Kolzer by a chain hoist, beat him repeatedly, and burned him with a lamp.

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[4] Another incident involving Cosmo occurred in January 1980. Petitioners Szwanki and James DiPasquale went to Cosmo's home, and James DiPasquale demanded $25,000 that he claimed Cosmo owed his brother Anthony. When Cosmo denied the debt, James DiPasquale and Szwanki beat him. After Cosmo reported this incident to the police, James DiPasquale telephoned Cosmo and told him that he would be killed. 84-659 Pet. App. 3a-4a; 84-5524 Pet. App. 34a-35a.

Between assaults, Anthony and Szwanki interrogated Kolzer about how he was going to raise the money. Kolzer said he would raise the money from friends and relatives and made telephone calls for that purpose. Anthony and Szwanki subsequently took Kolzer to a Western Union office to pick up money that his son had wired, and they then took him to a bar to meet a cousin who had gathered money for him. 84-659 Pet. App. 4a-5a; 84-5524 Pet. App. 35a-36a.

c. The attack on the third victim, Swain Crawford, followed a similar pattern. Crawford was a used car salesman at a car dealership belonging to petitioners John and Peter Serubo. On May 9, 1981, after Crawford picked up his paycheck, Anthony DiPasquale directed Crawford to go to John Serubo's office. There he found Anthony DiPasquale, both Serubos, and another man. Anthony repeatedly punched Crawford and asked why he had taken money from Peter Serubo, who also told Crawford that he owed Serubo $1,800. Crawford denied owing the money. However, when Anthony pointed a gun at his head, Crawford telephoned a friend, who said she would try to get the money. Crawford was then taken to the auto body shop where victim Kolzer had been beaten, was told of several beatings there by DiPasquale, but also was told that he had nothing to worry about if he paid the money. Crawford then telephoned his friend again, and she provided Crawford with a diamond ring worth $1,800. Anthony first said that unless it was worth $12,000, it was not worth Crawford's life. But Anthony then gave the ring to Peter Serubo and instructed Crawford to return two days later with $1,800. Crawford complied with Anthony's instructions, even though he owed the Serubos nothing. 84-659 Pet. App. 5a-6a; 84-5524 Pet. App. 36a-37a.

d. Evidence also was introduced relating to the use of extortionate means to collect two other debts. The first incident involved Francis Rosetti, who operated an automobile repair service in Philadelphia and occasionally bought parts from the dealership owned by the Serubos. Anthony DiPasquale returned from John Serubo's house with photocopies of bills evidencing Rosetti's debt, and then visited Rosetti to demand payment. Rosetti complained that Anthony had scared his wife when he stopped at Rosetti's house and Anthony subsequently told Rosetti that "next time it won't be so friendly" (84-5524 Pet. App. 38a). Although Rosetti denied owing the money, he agreed to pay the Serubos $5,000, and they gave him two days to do so. Rosetti subsequently did make the payment. See *id.* at 37a-38a.

The second incident involved Mark Courtney, a salesman for a company that customized vans for the Serubos' dealership. Courtney was summoned to the dealership, where he was confronted by John and Peter Serubo, Anthony DiPasquale, and Szwanki. Peter Serubo told Courtney that the dealership was paying too much for the customized vans. While Anthony DiPasquale repeatedly hit Courtney, Peter Serubo screamed that Courtney owed them $5,000 because of the asserted overcharges. DiPasquale took $300 from Courtney's wallet for "debt" collection services, and Peter Serubo demanded payment by the next day. Courtney left the dealership and telephoned his employer for the money, and he paid the money the following day. 84-5524 Pet. App. 38a.

2. The court of appeals affirmed the convictions (84-659 Pet. App. 1a-34a), rejecting petitioners' contention that their conduct was beyond the reach of 18 U.S.C. 894(a). That Section prohibits the use of

extortionate means "(1) to collect or attempt to collect any extension of credit, or (2) to punish any person for the nonrepayment thereof." Relying on the definition of an extension of credit as a loan or an agreement to defer the repayment or satisfaction of a debt or claim (18 U.S.C. 891(1)), the court explained that under the statutory scheme, the debt or claim at issue may be disputed, invalid, or even wholly fictitious (84-659 Pet. App. 7a-8a). The court further explained that "under section 891(1), an agreement to defer the repayment of a debt may be implied from the debt, even if the debt is wholly fictitious" (84-659 Pet. App. 9a). The court held that the indictment's references to claimed debts were legally sufficient because "[w]hen a self-styled creditor appears before his 'debtor' and demands satisfaction, the creditor posits both a debt and the prior deferral of its repayment" (*ibid.*). Because the jury instructions separated the claimed debt from the agreement to defer repayment, the court concluded "with certainty" that "if the jury found a claimed debt *and* an independent agreement to defer repayment, it found a claimed debt" (*id.* at 11a (emphasis added)). Accordingly, with the element of violence clearly established, the court determined that the necessary elements of the offense were present (*id.* at 12a).

ARGUMENT

Petitioners contend that their conduct did not violate the Extortionate Credit Transaction Act, 18 U.S.C. 891-896. The court of appeals correctly rejected this fact-bound claim, and its holding does not conflict with any decision of this Court or of another court of appeals. Further review therefore is unwarranted.[5]

1. Petitioners' contention that their conduct did not violate 18 U.S.C. 894(a) is refuted by the plain language of that Section, which provides:

> Whoever knowingly participates in any way, or conspires to do so, in the use of any extortionate means
>
> > (1) to collect or attempt to collect any extension of credit, or
> > (2) to punish any person for the nonrepayment thereof,
>
> shall be fined not more than $10,000 or imprisoned not more than 20 years, or both.

The term "[t]o extend credit" is defined broadly for these purposes to mean (18 U.S.C. 891(1)):

> to make or renew any loan, or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim,

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[5] Petitioner Szwanki's petition also briefly addresses several other issues regarding allegedly prejudicial remarks by the prosecutor and hearsay testimony (84-5618 Pet. 4-5), and in the questions presented (*id.* at 2-3), he identifies several other issues that are not discussed in the body of the petition. We rely on the opinion of the court of appeals with regard to these other issues (84-659 Pet. App. 13a-31a), which are not raised by the other petitioners and do not warrant review by this Court.

> whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.

In this case, the evidence at trial clearly showed that on each occasion one or more of the petitioners claimed that the victim owed money to Anthony DiPasquale or to the Serubos, and that extortionate means were used to collect or to attempt to collect the claimed debt. It is irrelevant for purposes of the Act that, as several of the petitioners stress (see 84-683 Pet. 7-11), the claims or debts were fictitious. Section 891(1), in sweeping terms, encompasses "any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising * * *." Petitioners' contention that the debts or claims involved here were fictitious simply means that they were "disputed" by the victims and were "invalid," features of debts or claims that expressly do *not* exclude them from coverage. Indeed, petitioner Redding concedes for present purposes that "the debt or claim may be wholly fictitious" (84-5524 Pet. 9).

2. a. Petitioners' principal contention, although framed in different ways, appears to be that no violation of 18 U.S.C. 894(a) occurred in this case because there was no preexisting extension of credit by Anthony DiPasquale, the Serubos, or others to the victims that petitioners in turn sought to collect by extortionate means in the incidents of violence that were established at trial. For example, several petitioners argue that although Anthony DiPasquale, Peter Serubo, and others may have insisted that the victims owed them money—which several petitioners concede gave rise to a claimed, but fictitious, debt [6]—

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[6] See 84-659 Pet. 8-9; 84-5524 Pet. 9-10.

this debt was not an "extension of credit" within the meaning of 18 U.S.C. 894(a). See 84-659 Pet. 7-11; 84-683 Pet. 9-11; 84-5524 Pet. 9-12. This argument is without merit, especially in the circumstances of this case. The proof at trial was fully sufficient to support jury findings of—at the very least—a tacit agreement with the victims to defer payment of a debt or claim, which constitutes an "extension of credit" under 18 U.S.C. 891(1) and 894(a).

Victims Cosmo and Kolzer both testified that they received drugs on credit from Anthony DiPasquale. Cosmo and Kolzer sold the drugs and then used the sale proceeds for repayment to DiPasquale. Tr. 125, 130-131 (Cosmo); Tr. 3-86 (Kolzer). Kolzer further testified that on one occasion he had lent DiPasquale money for the purchase of chemicals to manufacture methamphetamine, in return for DiPasquale's delivery to Kolzer of the finished product. Thereafter, however, DiPasquale still insisted that Kolzer owed him $8,000 from the sale of the methamphetamine they had made (84-659 Pet. App. 4a; 84-5524 Pet. App. 35a).[7]

An analogous series of cases involving gambling partners establishes that when a defendant and a

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[7] Petitioner Redding concedes (84-5524 Pet. 7 n.**) that past credit transactions could be inferred from Cosmo's testimony about his drug dealings with DiPasquale, but Redding stresses that Cosmo gave uncontradicted testimony that the debts at issue in this case were fictitious. Redding also asserts (*id.* at 7) that Cosmo did not connect these fictitious debts to any prior transactions or events. Redding's objections are irrelevant. The jury may have chosen to disbelieve Cosmo's denial of indebtedness to DiPasquale. The evidence of Cosmo's and DiPasquale's past credit transactions was alone sufficient to support the inference that they had an agreement to defer payment whenever a debt arose between them.

victim have an ongoing relationship in which it is anticipated that one will owe money to the other from time to time, there is an implicit agreement between the two to defer payment each time such a debt arises. *United States* v. *Mase*, 556 F.2d 671, 674 (2d Cir. 1977). See also *United States* v. *Czarnecki*, 552 F.2d 698, 703 (6th Cir.), cert. denied, 431 U.S. 939 (1977); *United States* v. *Briola*, 465 F.2d 1018 (10th Cir. 1972), cert. denied, 409 U.S. 1108 (1973); *United States* v. *Keresty*, 465 F.2d 36 (3d Cir.), cert. denied, 409 U.S. 991 (1972). Similarly, in *United States* v. *Bufalino*, 576 F.2d 446 (2d Cir.), cert. denied, 439 U.S. 928 (1978), the victim obtained diamonds from the defendant by deceit, and the defendant attempted to collect repayment by force. Unlike in the gambling cases, there was no proof of a course of conduct; the evidence showed only that an obligation had arisen and that it was the understanding of the parties that the obligation would not be satisfied until some time in the future. Nonetheless, the court of appeals found that the proof satisfied the requirements of Section 894 (576 F.2d at 452). Consequently, the fact that in this case two of the victims had past deferral agreements with petitioner Anthony DiPasquale [8] made the evidence for a tacit agreement to defer here as convincing as in the gambling cases and far stronger than the evidence in *Bufalino*. See also *United States* v. *Horton*, 676

[8] With respect to the third victim, Swain Crawford, there was evidence suggesting that Crawford had embezzled $1,500 from the Serubos' car dealership and that he had agreed to repay it (Tr. 56-57, 279 (Crawford)). This evidence was sufficient to support a finding that the Serubos, upon discovery of the misappropriation, agreed to deferral of Crawford's debt by accepting his promise to pay them back at a later date.

F.2d 1165, 1168, 1171 (7th Cir. 1982), cert. denied, 459 U.S. 1201 (1983) (finding of an extension of credit based, inter alia, on the fact that on one occasion the defendant gave the victim heroin on credit).

These circumstances are quite different from those in *United States* v. *Boulahanis*, 677 F.2d 586 (7th Cir.), cert. denied, 459 U.S. 1016 (1982), upon which petitioners principally rely.[9] See 84-659 Pet. 7, 10; 84-683 Pet. 6-7, 9, 11; 84-5524 Pet. 10-12, 15-17. In *Boulahanis*, the victim, the owner of a social club, was beaten by a group of men. The following night, the attackers reappeared and told the victim that if he did not pay them $300 protection money for the past month and $500 per month thereafter, they would shut the club down. The victim immediately paid. The court of appeals, observing that an extension of credit requires a deliberate act by a creditor and not just a default by a customer, found no extension of credit. But the Seventh Circuit emphasized (677 F.2d at 590) that "[i]f the previous night [the attackers] had given [the victim] additional time to pay, that would have been an agreement to defer payment of a debt, and such a deferral would be within the reach of section 894." The Seventh Circuit also acknowledged (*id.* at 591) that in some instances deferral could be inferred from circumstantial evidence. The court refused to make such a finding in that case, however, because it was of the view that there simply was no evidence of a deferral of payment (*id.* at 590-591).

Thus, in *Boulahanis*, there was no evidence concerning a prior relationship between the victim and

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[9] In *Boulahanis* the Seventh Circuit cited its then-recent decision in *United States* v. *Horton*, *supra*, with approval. See 677 F.2d at 590.

his attackers. The fact that the defendants in *Boulahanis* fixed a recurring date certain for receipt of future payments, without providing for deferral of missed payments, suggests that the victim's failure to pay in that case was indeed no more than a default, without a corresponding extension of credit by the defendants. In this case, by contrast, despite the victims' denial of indebtedness, the jury could have found that Anthony DiPasquale had given the victims drugs on credit (or that the Serubos had discovered the embezzlement (see note 8, *supra*)) with the understanding that the victims would at some future date repay them.

b. Even if the evidence of implicit deferral agreements arising from the parties' past relationships were insufficient to satisfy the *Boulahanis* standard as interpreted by petitioners, there is a second ground supporting a finding of agreements to defer. That ground rests on the fact that liability under Section 894 may arise subsequent to the defendant's threat or use of force if the defendant then defers the time for payment. See *United States* v. *Annerino*, 495 F.2d 1159, 1166 (7th Cir. 1974) (debt arising out of victim's misappropriation of funds deferred from time of threat until time of repayment meeting); *United States* v. *Briola*, *supra* (debt deferred from time of threat until the following day, so that victim could gather funds); *United States* v. *Andrino*, 501 F.2d 1373 (9th Cir. 1974) (victim's debt deferred from time of threat until time of repayment meeting).[10]

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[10] Several petitioners contend (84-659 Pet. 7-9; 84-5524 Pet. 17) that an agreement to defer payment made contemporaneously with or subsequently to the use of force consti-

There was no such agreement in *Boulahanis*, because on the night of the first attack the victim did not agree—either tacitly or explicitly—to payment of the money, much less to a time frame in which payment would be made. In this case, however, whenever petitioners made an extortionate demand for payment by a victim, they invariably also extracted the victim's agreement to pay the debt. They then withheld further beatings, at least temporarily, during which time the victim took agreed-upon steps to attempt to pay the debt. Moreover, one or more of the petitioners often stood by and supervised the victims' calls to friends and relatives to collect money; in doing so, they learned about and implicitly ratified the necessary lapse of time from the time of the call until the victim collected and turned over the money. In some cases, petitioners even specified a date certain for payment.[11]

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tutes a violation of Section 892(a), which prohibits the making of extortionate extensions of credit, but not of Section 894. However, the court of appeals did not decide whether a specific sequence of events is essential to establishing a violation of Section 894, because it concluded that "[w]hether the claimed debts in this case were fictitious or real, each was claimed to have arisen prior to its extortionate collection" (84-659 Pet. App. 12a). But even if the DiPasquales are correct (84-659 Pet. 8-9) that the jury could have found that there was no claimed debt prior to petitioners' threats, that fact hardly calls for this Court's review. The only court of appeals that has considered the timing issue decided that liability under Section 894 does not "turn on whether the beating was administered immediately before or immediately after the creation of the promise to pay." *United States* v. *Briola*, 465 F.2d at 1021.

[11] For example, Anthony DiPasquale instructed victim Crawford to bring $1,800 to the Serubos' car dealership on Monday, May 11, two days after he was attacked (84-659 Pet. App. 6a; 84-5524 Pet. App. 37a).

There is also other evidence supporting the conclusion that the defendants agreed to and even anticipated a postponement of payment from the time of the attack until some future collection date. Petitioners generally used pretexts to induce their victims to meet them at the place of attack—almost always a place remote from the victim's residence or business. Petitioners could hardly have expected their victims to meet them with large amounts of cash in hand. Moreover, it was at these meetings that petitioners extracted promises of payments of the victims' "debts." Hence, it is clear that petitioners expected time to pass from the time of assertion and acknowledgement of the debt until its collection. That alone constitutes evidence that petitioners agreed to defer their victims' debts.

3. While the evidence in this case supports both the jury's finding of claimed debts and agreements to defer repayment, the court of appeals, when reviewing the indictment's sufficiency, held (84-659 Pet. App. 9a) that under Section 894 the element of agreement to defer the repayment of a debt may be implied from the debt itself. This holding properly flows from Congress's mandate that the Extortionate Credit Transaction Act, 18 U.S.C. 891-896, is to be generously construed to reach a wide variety of transactions where violence is used to enforce payment.[12]

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[12] The Serubos' petition (84-683 Pet. 6-11) repeatedly refers the Court to titles of the Consumer Credit Protection Act, Pub. L. No. 90-321, Tit. II, 82 Stat. 159 *et seq.*, other than the Title containing the Extortionate Credit Transaction Act, at issue here. Since the various titles of the Consumer Credit Protection Act address vastly different concerns (compare *Perez* v. *United States*, 402 U.S. 146 (1971), with *Ford Motor Credit Co.* v. *Cenance*, 452 U.S. 155 (1981)) and contain sepa-

Congress intended that the Extortionate Credit Transactions Act be broadly construed. *United States* v. *Andrino*, 501 F.2d at 1377; *United States* v. *Annerino*, 495 F.2d at 1164-1166.[13] The members of the Conference Committee on the bill that became 18 U.S.C. 891-896 specifically warned that there should be "no doubt of the Congressional intention that [the bill] is a weapon to be used with vigor and imagination against every activity of organized crime that falls within its terms." H.R. Conf. Rep. 1397, 90th Cong., 2d Sess. 31 (1968). Consistently with this clear expression of congressional intent, the courts of appeals have recognized that narrow, technical readings of the Act's definitions would defeat the congressional aim of "match[ing] the ingenuity of the criminal in adopting new, more evasive, 'forms' and 'techniques.'" *United States* v. *Andrino*, 501 F.2d at 1377. In addiiton, the courts repeatedly have rejected any interpretations that smack of a "strict commercial law understanding" of the Act. *United States* v. *Czarnecki*, 552 F.2d at 703.

Section 891(1) defines an extension of credit as an agreement to defer the "repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising * * *." Relying on this language, several courts have held

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rate sections stating Congress's findings and applicable definitions, petitioners' citations to other titles and cases thereunder have no bearing on the issue here.

[13] We note that the *Boulahanis* court did not explicitly address the legislative intent underlying the Extortionate Credit Transactions Act. But at the time *Boulahanis* was decided, the Seventh Circuit had already joined several other circuits in holding that the Act should be interpreted generously. *United States* v. *Annerino*, 495 F.2d at 1164-1166.

that the statute reaches debts arising in a broad range of transactions, many of which bear little resemblance to traditional conceptions of a loan. See, *e.g.*, *United States* v. *Neal*, 692 F.2d 1296 (10th Cir. 1982) (debt arose when narcotics trafficker withheld profits from partner); *United States* v. *Bufalino*, *supra* (debt arose from swindle); *United States* v. *Annerino*, *supra* (debt arose through unauthorized use of credit cards and misappropriation of partnership funds); *United States* v. *Bonanno*, 467 F.2d 14 (9th Cir. 1972) (debt arose when marijuana load was lost in transportation).

The statute also contemplates a broad construction of the deferral requirement. " '[E]xtortionate credit transactions are characterized by the use, or the express or implicit threat of the use, of violence or other criminal means to cause harm to person, reputation, or property as a means of enforcing repayment." Pub. L. No. 90-321, § 201(a)(2), 82 Stat. 159. Thus the very approach of the Act is to "define extortionate credit transactions in terms of this express finding rather than imposing a requirement that the prosecution prove each of the elements of a loan shark transaction qua loan shark transaction." *United States* v. *Keresty*, 465 F.2d at 41; see also *United States* v. *Andrino*, *supra*; *United States* v. *Czarnecki*, *supra*.

It necessarily follows that an extension of credit may arise from a single transaction where a self-styled creditor appears before his victim, posits a debt, and demands satisfaction. The position petitioner Redding urges (84-5524 Pet. 14), under which the existence of an agreement to defer repayment must be shown by facts independent of those proving a debt or claim, yields logically absurd re-

sults.[14] The approach of the court below is simply to take a defendant at his word.[15] If in conjuring up a prior transaction to "justify" his violent collection efforts, a defendant explicitly or implicitly posits a debt and prior or future deferral of its payment, his liability under Section 894 should be the same as if the debt and deferral were real.[16]

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[14] Likewise irrelevant is petitioner Redding's observation (84-5524 Pet. 12-13) that the court below cited only cases where there was evidence independent of a debt or claim to support the existence of a deferral agreement. Most cases, particularly those involving real debts, will present such independent evidence. See, *e.g.*, *United States* v. *Nace*, 561 F.2d 763 (9th Cir. 1977); *United States* v. *Totaro*, 550 F.2d 957 (4th Cir.), cert. denied, 431 U.S. 920 (1977). But that does not mean that in some cases evidence of deferral cannot be implied from the debt itself.

[15] Petitioner Redding is incorrect in contending (84-5524 Pet. 10) that the court below requires nothing more than proof of a debt. The court cited with approval the observation in *United States* v. *Mase*, 556 F.2d 671, 674 n.6 (2d Cir. 1977), that because bettors must often pay when they bet, not every betting debt includes an agreement to defer repayment. This suggests that the court would scrutinize the debt at issue to determine whether its circumstances permit the inference of a deferral agreement.

[16] In any event, the statement by the court below (84-659 Pet. App. 10a) that "a claimed debt is one type of extension of credit under section 891(1)" was made in that portion of the opinion dealing with challenges to the adequacy of the indictment. As we have shown, the proof at trial demonstrated both "a claimed debt and an independent agreement to defer repayment" (*id.* at 11a (emphasis in original)). The *Boulahanis* court, on the other hand, considered only the evidentiary question of whether the debt and other circumstantial evidence set forth in the record before it was sufficient to prove an extension of credit.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 1985

☆ U. S. GOVERNMENT PRINTING OFFICE: 1985 461531 10152